

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CAPITOL ONE BANK,

Plaintiff,

Case No. 05-C-1359

v.

BARRY P. DEGNER,

Defendant.

OPINION AND ORDER

Barry Degner is attempting to remove this collection action from the Circuit Court for Waukesha County to federal court. He asserts that this court has federal question jurisdiction over the subject matter because, once he was in federal court, he filed counterclaims based upon federal law. He did not file the counterclaims in the state court. Therefore, the case in state court contained no federal claims and was not removable. Jurisdiction must be established at the time of removal. See 28 U.S.C. § 1441(a). Consequently, because the court lacks jurisdiction, this court **ORDERS** that this action is remanded to the Circuit Court for Waukesha County (Wisconsin).

IT IS FURTHER ORDERED that a certified copy of this order of remand shall be mailed to the clerk of the Circuit Court for Waukesha County whereupon that court may proceed with this case.

IT IS FURTHER ORDERED that the "Petition to Proceed Without Prepayment of Fees and/or Costs" (filed December 29, 2005) IS DENIED.

Done and Ordered in Chambers at the United States Courthouse,
Milwaukee, Wisconsin, this 11th day of January, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge